THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.6272 OF 2006

DATED: 26-07-2007

BETWEEN

M/s. Sree Jaya IBP Gas,
Room No.2, K.P.S. Complex,
R.S. Road, Railway Kodur,
Kadapa, Rep. by its Proprietor
Smt. P. Jaya Lakshmi,
W/o. Sri S. Naveen Babu,
2/38, Main Bazar, Kodur,
Kadapa District.

...PETITIONER

AND

The Government of India,
Ministry of Petroleum and
Natural Gas, Sastry Bhawan,
New Delhi, Rep. by its
Secretary and others.

...RESPONDENTS

ORDER:

Learned counsel for the petitioner submits that the petitioner was appointed as LPG distributor of IBP Company Limited (An Indian Oil Group Company) – second respondent, at Kodur Mandal of Kadapa District vide proceedings dated 11.06.2004 and the petitioner also obtained a licence for storage shed for LPG at Kodur village from the Explosives Department of the Government of India on 10.11.2004. Thereafter, the Joint Collector – Licensing Authority, Kadapa also granted a Licence No.2/04 in favour of petitioner authorizing her to purchase, sell and store LPG Gas. He further submits that the petitioner commissioner the LPG distributorship at Kodur on

29.11.2004.

2. It is the case of the petitioner that the third respondent – Bharat Petroleum Corporation appointed fourth respondent as distributor for distribution of LPG gas at Obulavaripalli of Kodur Mandal in 2001.
It is not in dispute that the area of operation of the petitioner distributionship as well as the fourth respondent is 15 KMs radius and the area of operation of the petitioner and the fourth respondent is overlapping each other. It is also not in dispute that as per the marketing plan of 1996-98 the second respondent appointed the petitioner as distributor of Kodur for distribution of LPG gas and the third respondent appointed the fourth respondent for LPG distributorship at Obulavaripalli of Kodur Mandal. The appointment of the fourth respondent is prior to the appointment of the petitioner.

3. It the further case of petitioner that as per the said marketing plan 1996-98 there should not be any overlapping of the distributor appointed by one company in respect of the distributor appointed by the other company. However, to resolve the dispute, it is stated that the Government of India vide its letter dated 17.09.2001 directed the respondents 2 and 3 to ensure that all extension counters, which are operated in the trading areas of the newly commissioned LPG distributors must be closed down and the customers served through those counters shall be transferred to the newly commission distributorships of the respective areas. Thus, it is stated that pursuant to the said letter of the Government of India and the subsequent letter dated 12.11.2001 directing the respondents 2 and 3 companies to implement the letter dated 17.09.2001 by advising the old distributors to stop supplies to such consumers who reside beyond their normal trading areas of operation in the trading areas of newly commissioned LPG distributor and transfer of such customers to newly commissioned distributionship immediately; the third respondent has not implemented the said directions of the Government of India.
It is stated that the second respondent company also addressed a letter to

the third respondent to implement the said letter of the Government of India but the third respondent has not implemented the same, therefore, she seeks a Writ of Mandamus to declare the action of the third respondent in allowing the fourth respondent to continue the LPG distributorship at Kodur Mandal of Kadapa District as illegal and arbitrary; to direct the third respondent to ensure stoppage of LPG distributorship by the fourth respondent in Kodur territorial area, Kadapa District and consequently direct the respondents 3 and 4 to transfer the existing LPG customers in Kodur territorial area, Kadapa District to her agency.

4. The third respondent filed a counter stating that the fourth respondent is the distributor of the third respondent at Obulavaripalli Village in the marketing plan 1996-98, who commissioned distribution from his outlet on 27.08.2001. It is stated that Obulavaripalli village distributionship was allotted as per the marketing plan 1996-98 and the area of operation of the fourth respondent distribution is also 15 KMs radius and is overlapping the area of operation of the petitioner's distribution. It is stated that the area of operation of the petitioner is 15 KMs radius from Kodur village and the distance between Obulavaripalli and Kodur is less than 15 KMs and there is a common area falling under the area of the both the distributorships.

It is stated that in respect of the distribution where the area of operation is overlapping certain norms have been prescribed so as to see the viability of the same, the viability norm of each distributorship is 8000 thousand refills per month but the fourth respondent has reached only 1,700 refills per month as agreed by oil companies in their meeting held on 09.03.2002. It is stated that as per clause 3.3 of the minutes of the meeting of the oil companies, in case a distributor is operating above 75% of the market refill ceiling, all the consumers serviced by the distributor in the common area of both the distributors to be transferred to a new distributor till the old distributor to a lever of refill ceiling limit of 75%. It is stated that the fourth respondent has not exceeded 75% of the selling limit i.e. 6000 refills per month and therefore, the question of transferring any refills or customers to the petitioner agency does

not arise.

It is further stated that the said letter of the Government of India applies in respect of the distributors who have been appointed prior to 1996-98, therefore, the petitioner is not entitled to seek enforcement of circulars dated 16.10.2001 and 12.11.2001.

It is further stated that the extension counter of the fourth respondent at Kodur village was closed long back on 14.02.2005 and his outlet is at Obulavaripalli only but not at Kodur. It is stated that the fourth respondent has not reached the 75% of the viability norm of ceiling limit of 8000 refills and hence, the question of transferring customers to the petitioner distributorship does not arise.

5. The fourth respondent also filed a counter stating that the third respondent appointed him as LPG distributor at Obulavaripalli village as per the distributorship agreement dated 27.08.2001 and its area of operation is in and around 15 KMs radius of Obulavaripalli village and likewise the petitioner was also appointed by the second respondent at Railway Kodur village on 26.11.2004. It is stated that the location of the petitioner distributorship at Kodur village is situated at 13.7 KMs away from the location of the fourth respondent at Obulavaripalli village. However, the distributionship of both of them is overlapping, as the area of operation of each of the distributionship is 15 KMs from their respective locations. It is stated that the sole basis for petitioner's claim is proceedings dated 17.09.2001 and 16.10.2001 issued by the first respondent and the said proceedings have no relevance to the facts of the case and are not at all applicable to the distributors appointed under the Government of Indian approved marketing plan 1996-98 and the guidelines issued by the Government of India approving the market plan are applicable to the distributors appointed prior to the marketing plan 1996-98 but not in respect of distributors appointed as per marketing plain 1996-98. It is stated that the petitioner has no vested right in exclusion of the fourth respondent in the common area of operation, as both of them have to

compete each other in respect of the common area.

6. I am of the opinion that the dispute between the parties no longer subsists in view of the authoritative judgment of this Court in W.P.No.12619 of 2005 dated 19.07.2006 wherein this Court while considering similar contentions and the subsequent resolutions passed in the meeting of the oil companies, more so, with regard to the memorandum of understanding dated 17.12.2004, wherein it was resolved that wherever the customers are enrolled in common area of operation there is no necessity to transfer customers from dealer of one oil company to dealer of another oil company or of the same oil company, if both the dealers are appointed for a common area. However, all the distributors, who are commissioned outside the Government approved marketing plan were not required to transfer customers. The Government approved marketing plan changed from time to time. As per the memorandum of understating of the oil companies dated 17.12.2004 one distributor need not transfer its customers to other distributor of the other oil company or the same oil company, if both the dealers are appointed for a common area.

That being the case, whether the fourth respondent has more number of customers or the petitioner has more number of customers is irrelevant. I am of the opinion that the ratio laid down in the aforesaid judgment equally applies to the contentions of the learned counsel for the petitioner in the instant case.

Following the aforesaid judgment, the writ petition is accordingly dismissed. No costs.

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V. ESWARAIAH, J

July 26, 2007
DSK